

SPIRO | HARRISON

David B. Harrison
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October 30, 2019

VIA ECF

Hon. George B. Daniels
United States District Judge
United States District Court, Southern District of New York
500 Pearl St., Court Room 11A
New York, NY 10007-1312

Re: Joel and Mary Rich v. Ed Butowsky *et al.*
Docket No. 1:18-cv-02223

Dear Judge Daniels:

Spiro Harrison (“the Firm”) represented Defendant Ed Butowsky (“Butowsky”) in the above-captioned matter. While Plaintiffs’ appeal was pending in the United States Court of Appeals for the Second Circuit (“Court of Appeals”), this Firm filed a motion to be relieved as Butowsky’s counsel (“the Motion”). See **Exhibit A**. The basis for the Firm’s requested withdrawal was Butowsky’s intention to appear *pro se*. The Court of Appeals granted the Motion on January 31, 2019. See **Exhibit B**. Given the Court of Appeals’ Order remanding this matter for further proceedings, the Firm respectfully requests the Court issue an Order permitting the Firm to be relieved as Butowsky’s counsel on the same grounds detailed in the Motion.

The Firm thanks the Court for considering its request to be relieved as counsel for Butowsky.

Respectfully Submitted,

/s/David B. Harrison
David B. Harrison

SO ORDERED on this ____ day of _____, _____

Hon. George B. Daniels
United States District Judge

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NEW YORK

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SEATTLE

EXHIBIT A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 18-2321

Caption [use short title]

Motion for: Spiro Harrison to be relieved as

Defendant-Appellee Ed Butowsky's counsel

Set forth below precise, complete statement of relief sought:

Spiro Harrison, counsel for defendant-appellee

Ed Butowsky, moves for an order relieving

the firm as counsel for Mr. Butowsky.

Rich et al v. Fox News Network LLC et al.

MOVING PARTY: Ed Butowsky

OPPOSING PARTY: Motion is Unopposed

☐ Plaintiff☒ Defendant☐ Appellant/Petitioner☒ Appellee/Respondent

MOVING ATTORNEY: David B. Harrison

OPPOSING ATTORNEY: N/A

[name of attorney, with firm, address, phone number and e-mail]

David B. Harrison, Spiro Harrison

830 Morris Turnpike, 2nd Floor, Short Hills, NJ 07078

(973) 232-0881; dharrison@spiroharrison.com

Court- Judge/ Agency appealed from: Hon. George B. Daniels, US District Court, S.D.N.Y.

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes☐ No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

☐ Yes☐ No

Has this relief been previously sought in this court?

☐ Yes☐ No

Requested return date and explanation of emergency:

Opposing counsel's position on motion:

☒ Unopposed☐ Opposed☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes☐ No☒ Don't Know

Is oral argument on motion requested?

☐ Yes☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☒ Yes☐ No If yes, enter date: February 4, 2019

Signature of Moving Attorney:

/s/ David B. Harrison

Date: 1/22/2019

Service by: ☒ CM/ECF ☐ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOEL RICH and MARY RICH

Plaintiffs-Appellants,

v.

Docket No.:18-2321

FOX NEWS NETWORK LLC, MALIA
ZIMMERMAN in her individual and
professional capacities, and ED
BUTOWSKY in his individual and
professional capacities,

Defendants-Appellees.

**MEMORANDUM IN SUPPORT OF SPIRO HARRISON'S MOTION TO BE
RELIEVED AS COUNSEL FOR DEFFENDANT-APPELLEE ED BUTOWSKY**

The law firm of Spiro Harrison (the "Firm") submits this brief and memorandum of law in support of its motion to be relieved as counsel for defendant-appellee Ed Butowsky ("Appellee" or "Butowsky") in the above-captioned matter. Given that Butowsky wishes to represent himself *pro se* for the duration of this action, no parties object to the withdrawal, and the action will be not be delayed in any way as a result of the relief, this motion should be granted.

Background

The Firm has been representing Butowsky since this matter was pending before the United States District Court for the Southern District of New York. After Judge B. Daniels of the S.D.N.Y. dismissed all of plaintiffs-appellants' claims against Butowsky and co-defendants, plaintiffs-appellants Joel and Mary Rich appealed to this Court. The Firm filed a brief with this Court on behalf of Butowsky in opposition to the appeal of Judge Daniels' decision granting the motions to dismiss. Oral argument of this matter has been set for February 4, 2019.

Butowsky has informed David B. Harrison of the Firm that he wishes to proceed *pro se* in this matter, and would no longer like to be represented by the Firm, or any other counsel for that matter. (See January 17, 2019 letter, acknowledged and signed by Ed Butowsky, attached hereto as Exhibit A). He has made his intentions clear, and confirmed them on more than one occasion. In addition, on January 14, 2019, the Firm sent a letter to this Court on behalf of Butowsky, stating that Butowsky would like to cede the six minutes of time allotted to him for the oral argument to Fox News Network, LLC. None of the parties to this action object to the relief sought herein.

Argument

The Firm has satisfactory reasons to withdraw as Butowsky's counsel, and a withdrawal at this juncture will not cause prejudice to any party or cause any delay in the proceedings. In addition, the withdrawal is entirely consistent with the client's express wishes. The basis for the requested withdrawal is that Butowsky has unequivocally communicated to the Firm his intention to proceed *pro se*. He does not want the Firm to represent him going forward, and does not intend to substitute counsel, but, rather, would like to represent himself. Butowsky's intentions are confirmed in the January 17, 2019 letter referenced above and attached hereto as Exhibit A.

The Firm's motion to withdraw as counsel conforms with the standards set forth in S.D.N.Y. Local Civil Rule 1.4, which provides that a court may grant a motion to be relieved as counsel "upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or replacement and the posture of the case, including its position, if any, on the calendar" Courts have made it clear that the "satisfactory reason" standard is not "good cause" and can be a lesser showing than good cause. *Hallmark Cap. Corp. v. Red Rose Collection, Inc.*, No. 96 Civ. 2839, 1997 WL 66146 at *1-2 (S.D.N.Y. Oct. 21, 1997). Here, as explained above, the request for relief as counsel is not only consistent with, but specifically caused by the client's desire to represent himself *pro se*. The proceedings will not be impeded or delayed as a result of the Firm's withdrawal as oral argument of the

appeal will still proceed as scheduled, regardless if the Firm represents Butowsky.

No parties will be prejudiced.

Conclusion

Accordingly, for the reasons set forth above, Spiro Harrison's motion to be relieved as counsel for defendant-appellant Ed Butowsky should be granted.

Respectfully submitted,

s/David B. Harrison
David B. Harrison
Jason C. Spiro
SPIRO HARRISON
830 Morris Turnpike, 2nd Floor
Short Hills, NJ 07078
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jspiro@spiroharrison.com

DATED: January 17, 2019

EXHIBIT A

SPIRO | HARRISON

David B. Harrison
(973) 232-4109
dharrison@spiroharrison.com

January 17, 2019

Via E-Mail & Regular Mail

Ed Butowsky
2200 Bradbury Court
Plano, TX 75093-4351

RE: *Joel Rich, Mary Rich v. Fox News Network, LLC, Malia Zimmerman, Ed Butowsky, Index No. 18-2321*

Dear Mr. Butowsky:

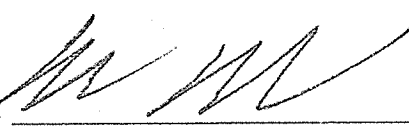
We are writing to confirm that you would like to proceed in the above-referenced matter *pro se*, and that you no longer would like the law firm of Spiro Harrison to represent you in this matter or any related matter. You have communicated to us that you would like to represent yourself going forward, and, specifically, at the oral argument scheduled for February 4, 2019. As a result and consistent with your wishes, Spiro Harrison will imminently file a motion with the United States Court of Appeals for the Second Circuit to be relieved as your counsel.

Please do not hesitate to contact us if you have any questions or concerns regarding this matter.

Sincerely,

s/ David B. Harrison
David B. Harrison

Date: JAN 22, 2019

Acknowledged and Agreed by: 

Ed Butowsky

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EXHIBIT B

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 31st day of January, two thousand and nineteen,

Joel Rich, Mary Rich,

Plaintiffs - Appellants,

v.

Fox News Network, LLC., Malia Zimmerman, in her individual and professional capacity, Ed Butowsky, in his individual and professional capacity,

Defendants - Appellees.

ORDER

Docket No. 18-2321

IT IS HEREBY ORDERED that the motion by Appellee Ed Butowsky to be relieved as counsel is GRANTED.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court